

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Jonathan L. Nicozisis

Serial No. : 10/666,163
Filed : September 19, 2003
Art Unit : 3732
Examiner : Ralph A. Lewis
Attorney Docket: NIC043 - 230540PT1
Title : APPARATUS AND METHOD FOR REMOVING A REMOVABLE TOOTH
POSITIONING APPLIANCE FROM THE TEETH OF A PATIENT

AFFIDAVIT OF DANN SCHWARTZ UNDER 37 C.F.R. § 1.132

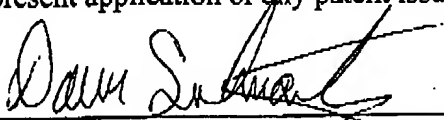
1. I, Dann Schwartz, am an individual residing at 5504 Janice Avenue, Kenner, LA 70065, and am a citizen of the United States of America.
2. I have reviewed and am familiar with the orthodontic tool, system, and method disclosed and claimed in the present United States Patent Application 10/666,163.
3. I am the General Manager of RAINTREE ESSIX®, which is a licensee and manufacturer of the orthodontic tool described and claimed in present United States Patent Application 10/666,163.
4. The orthodontic tool that is sold by RAINTREE ESSIX® is an apparatus comprising a handle portion, a member extending from the handle portion and having a distal end, and an engagement block having a tapered edge for engaging an edge of the tooth positioning appliance, the engagement block protruding from the working portion at or near the distal end (hereinafter "the orthodontic tool"). RAINTREE ESSIX® sells the orthodontic tool exclusively for use in conjunction with/for: (1) a dental system for positioning teeth further comprising a removable tooth positioning appliance for aligning teeth of a patient; and/or (2) a method of removing a removable tooth positioning appliance from teeth of a patient which comprises: providing the orthodontic tool; positioning the tapered edge of the orthodontic tool near an edge of the tooth positioning appliance; inserting the tapered edge between the tooth positioning appliance and the teeth of the patient; and exerting force to the handle portion thereby causing the tooth positioning to release from the teeth of the patient.
5. The orthodontic tool has experienced substantial commercial success. In the time period from January 1, 2005 to August 31, 2005, RAINTREE ESSIX® has sold over 46,000 units. The sales figures of the orthodontic tool were much higher than expected and higher than that which is normally achieved with products of this nature. In fact, the orthodontic tool experienced the largest first year sales volume for products of this nature in the history of RAINTREE ESSIX®.

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The commercial success of the orthodontic tool is believed to flow from the functions and advantages of the orthodontic tool, which is its use in removing tooth positioning appliances and its downstream distribution with such tooth positioning appliances. These functions and advantages are disclosed in the specification of United States Patent Application 10/666,163. A true and correct copy of the sales invoice for the orthodontic tool is annexed hereto with certain proprietary information blacked out.

6. I, Dann Schwartz, do hereby swear, affirm, and attest that all statements made in paragraphs 1-5 above are true and correct and that all statements made on information and belief are believed to be true, and further that these statements are made with the knowledge that willful false statements and the like are so made under the penalties of perjury, and that any false statements may jeopardize the validity of the present application or any patent issued thereon.

Date: September 28, 2005


Dann Schwartz, G.M. for RAINFREE ESSIX®

PRODUCT PROFIT REPORT
RAINTREE ESSIX, L.L.C.

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**REPORT SELECTION CRITERIA
FOR ANY/ALL ORDERS**

WITH STOCK ITEMS = ART01

Stock Number	Description	Units Sold	Retail Price	Ds ct	Gross Sales	Gross Profit	Comm	Profit Margin
ART01	Appliance Remover Tool	46750.00					\$0.00	
	PRODUCT QUALITY	Return:	50.00					
	OTHER	Return:	100.00					
	CUSTOMER DOESNT WANT	Return:	550.00					
CUMULATIVE GRAND TOTALS:								
		46750.00						